

## Chapter 13

### TOBACCO CONTROL ACT (Assented to November 5, 2003)

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## Chapter 13

### TOBACCO CONTROL ACT

#### Preamble

Whereas the youth and children of Nunavut are the bearers of our future and our culture;

And whereas, compared to other Canadians, large numbers of Nunavummiut youth continue to begin using tobacco, and large numbers of adult Nunavummiut continue to use tobacco;

And whereas evidence implicates the use of tobacco products in numerous diseases affecting Nunavummiut and it has been determined that smoke from tobacco products is a serious health hazard because of its adverse effects and risk to the health of all Nunavummiut;

And whereas the Government of Nunavut has a responsibility to promote the health of all Nunavummiut, by reducing their access to tobacco products and protecting them from inducements to use tobacco, and Inuit culture requires that we respect and care for ourselves and for others in our communities;

And whereas it is desirable for the purpose of promoting and protecting the health, safety and welfare of Nunavummiut to ensure that public places and workplaces will be free from tobacco smoke;

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

#### INTERPRETATION

##### Interpretation

1. In this Act,

"employee" means a person who performs any work for or supplies any service to an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer, and includes a volunteer and a person who is self-employed, and "employment" has a corresponding meaning; (*employé*)

"employer" means any person who, as the owner, proprietor, manager, contractor, superintendent, supervisor or overseer of any activity, business, work, trade, occupation, or profession, has control over or direction of, or is directly or indirectly responsible for the employment of, an employee; (*employeur*)

"Minister" means the Minister of Health and Social Services, except where the context otherwise requires; (*ministre*)

"proprietor" means the person who ultimately controls, governs or directs the activity carried on within a public place and includes the person actually in charge of the premises at any particular time; (*gestionnaire*)

"public place" means any building, structure, vehicle or conveyance, or part thereof, whether covered by a roof or not, to which the public has access as of right or by invitation, expressed or implied, whether or not a fee is charged for entry, but does not include a street, road or highway; (*lieu public*)

"restaurant or bar" means an establishment engaged in the preparation, sale and service of food or drink, or both food and drink, to the public or to members or guests of a private club for consumption on the premises; (*restaurant ou bar*)

"smoke" or "smoking" includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment; (« *fumer* » ou « *usage du tabac* »)

"workplace" means a building, structure, vehicle or conveyance or part thereof in which one or more employees work, including any other area utilized by employees. (*lieu de travail*)

#### Application

**2.** (1) This Act applies to tobacco in any processed or unprocessed form that may be smoked, inhaled or chewed, including snuff, but does not apply to products intended for use in nicotine replacement therapy.

#### Government bound by Act

(2) This Act binds the Government of Nunavut.

### PROVISION OF TOBACCO TO PERSONS UNDER 19

#### Selling or supplying to persons under 19

**3.** (1) No person shall sell or supply, or offer to sell or supply, tobacco to a person who is less than 19 years old.

#### Selling or supplying to persons apparently under 19

(2) No person shall sell or supply, or offer to sell or supply, tobacco to a person who appears to be less than 19 years old, regardless of the person's actual age.

#### Defence

(3) It is a defence to a charge under subsection (1) or (2) that the defendant believed the person receiving the tobacco to be at least 19 years old because the person produced identification in a prescribed form showing his or her age and there was no

apparent reason to doubt the authenticity of the document or that it was lawfully issued to the person producing it.

#### Improper documentation

(4) No person shall produce, as evidence of his or her age, identification that was not lawfully issued to him or her.

### PROHIBITION OF SALE OF PRODUCTS APPEARING TO BE TOBACCO PRODUCTS

#### Prohibition of sale of products appearing to be tobacco products

**4.** No person shall sell or supply, or offer to sell or supply, any product, including confectionary, designed to appear as a cigarette, cigar or pipe, or as a tobacco product.

### DUE DILIGENCE AND VICARIOUS LIABILITY

#### Policies, practices and procedures

**5.** (1) A retailer of tobacco shall have written policies, practices and procedures that are integrated into the day to day operations of the retailer to discourage and prevent the selling and supplying of tobacco to persons who are less than 19 years old.

#### Training and education

(2) A retailer of tobacco shall provide to employees the training and education that are appropriate in the circumstances so that

- (a) the employees understand this Act and the regulations;
- (b) the employees understand policies, practices and procedures of the retailer; and
- (c) the employees understand and are capable of carrying out their duties according to this Act, the regulations and the established policies, practices, and procedures of the retailer.

#### Monitoring

(3) A retailer of tobacco shall establish a monitoring mechanism that is appropriate in the circumstances

- (a) to enable the retailer to determine whether the employees are complying with this Act, the regulations and the practices, policies, and procedures of the retailer as required under this section; and
- (b) to identify circumstances that may affect the employee's ability to comply with the requirements of this Act, the regulations or the policies, practices and procedures of the retailer.

#### Records of steps taken

(4) A retailer shall keep records of all steps taken under subsections (2) and (3).

Content of policies, practices and procedures

(5) The policies, practices and procedures of a retailer shall include at least the following components:

- (a) a prohibition against employees handling tobacco products until they are fully trained and educated by experienced personnel as required in this section;
- (b) training of employees to
  - (i) request prescribed forms of identification from anyone who appears to be less than 19 years old,
  - (ii) refuse to sell or supply tobacco when the prescribed form of identification has not been provided, and
  - (iii) to teach them how to examine identification to establish that it is in a form that is prescribed.

Contents of monitoring

(6) The monitoring by a retailer shall include at least the following components:

- (a) the supervision of new employees and employees with previous contraventions of this Act, the regulations or the policies, practices and procedures of the retailer, until the retailer is satisfied that the employee understands and is adhering to the requirements of this Act, the regulations or the policies, practices and procedures of the retailer;
- (b) where practicable in the circumstances, self-administered compliance checks to determine if employees are complying with this Act, the regulations or the policies, practices and procedures of the retailer; and
- (c) direct observation of an employee's performance on a regular basis.

Vicarious liability

**6.** A retailer of tobacco shall be deemed to be liable for any contravention of subsection 3 (1) or (2) by an employee or agent of the retailer on premises of the retailer, unless the retailer can be shown to have exercised the due diligence required under section 5.

## TOBACCO DISPLAYS AND SALES

Handling of tobacco prohibited

**7.** No person shall sell or supply tobacco in a retail store by means of a display that permits a person to handle the tobacco before paying for it.

Retail displays and promotional advertising

**8.** No person shall advertise or promote the use of tobacco or tobacco products at a retail premises unless the advertisement or display meets such requirements as may be prescribed.



## PROHIBITION OF SALE OF TOBACCO

### Prohibition of sale of tobacco

- 9.** No person shall sell or offer to sell tobacco in
- (a) a health facility as defined in the *Hospital Insurance and Health and Social Services Administration Act*;
  - (b) a child day care facility as defined in the *Child Day Care Act*;
  - (c) a nursing home;
  - (d) an elder home;
  - (e) or in the immediate vicinity of the business premises of a pharmaceutical chemist as defined in the *Pharmacy Act*; or
  - (f) a place that belongs to a class that is prescribed.

## PACKAGING AND SIGNS

### Package size

- 10.** No person shall sell or offer to sell cigarettes at retail or for subsequent sale at retail or distribute or offer to distribute them for that purpose unless the cigarettes are contained in packages of at least 20 cigarettes or such greater number as may be prescribed.

### Signs

- 11.** No person shall, in any place, sell or offer to sell tobacco at retail unless signs bearing health warnings and other information and referring to the prohibitions imposed by section 3 are posted at the place in the form, manner and location that are prescribed.

## VENDING MACHINE

### Vending machine: general prohibition

- 12.** (1) Despite a permit having been issued under the provisions of the *Tobacco Tax Act*, no person shall allow a vending machine for selling or dispensing tobacco to be in a place that the person owns or occupies.

### Exceptions

- (2) Subsection (1) does not apply with respect to a vending machine for selling or dispensing tobacco that contains no tobacco and
- (a) is in a place to which the public does not have access; or
  - (b) is inoperable.

## CONTROLS RELATING TO SMOKING TOBACCO

### Prohibition of smoking in workplaces

- 13.** (1) No person shall smoke in any workplace or in the three metre radius surrounding any entrance to or exit from a workplace whether or not a sign prohibiting smoking is posted.

#### Exception for enclosed shelter

(2) The three metre rule set out in subsection (1) does not apply to an enclosed shelter set aside for smoking that is closer than three metres to an entrance or exit, if the shelter is so constructed that smoke from the shelter does not come into contact with persons entering or leaving the workplace.

#### Employer obligations

(3) Every employer shall

- (a) ensure compliance with this section;
- (b) give notice to each employee in the workplace that smoking is prohibited in the workplace;
- (c) post signs prohibiting smoking in a form, manner and location that is prescribed, in conspicuous locations at every entrance and every washroom in the workplace indicating that smoking is prohibited in the workplace; and
- (d) ensure that no ashtrays or similar smoking equipment are placed or permitted to remain in any part of the workplace.

#### Exception

(4) This section does not apply to

- (a) a restaurant or bar;
- (b) a part of a workplace that is used as a private residence and to which the public is not admitted;
- (c) a room in a hotel, motel or other place where rooms are rented for sleeping accommodation, provided the room is used for sleeping accommodation only and the room is, at the time it is rented, designated and specifically set aside as a room in which smoking is permitted;
- (d) a workplace, to which the public is not admitted, and that is located in a dwelling where the only employees of that workplace are persons who live in the dwelling; or
- (e) an area that is set aside for smoking, if the area is in an elder home or other premises that are prescribed, if the area meets such requirements as may be prescribed.

#### Area that does not meet requirements

(5) A person who owns or operates an elder home referred to in paragraph (4)(e) shall not identify an area as an area where smoking is permitted if the prescribed requirements are not met.

#### Prohibition

(6) No employer or person acting on behalf of an employer

- (a) shall dismiss or threaten to dismiss an employee;
- (b) shall discipline or suspend an employee or threaten to do so;
- (c) shall impose a penalty upon an employee; or
- (d) shall intimidate or coerce an employee,

because the employee has acted in accordance with or has sought the enforcement of this Act.

#### Prohibition of smoking in public places

**14.** (1) No person shall smoke in any common area of an apartment or condominium, or any public place, or in the three metre radius surrounding any entrance or exit to a public place whether or not a sign prohibiting smoking is posted.

#### Exception for enclosed shelter

(2) The three metre rule set out in subsection (1) does not apply to an enclosed shelter set aside for smoking that is closer than three metres to an entrance or exit, if the shelter is so constructed that smoke from the shelter does not come into contact with persons entering or leaving the public place.

#### Smoking around schools

(3) No person shall smoke in the fifteen metre radius surrounding any entrance or exit to a school.

#### Proprietor obligations

- (4) Every proprietor of a public place shall
- (a) ensure compliance with this section;
  - (b) give notice to each person in the public place that smoking is prohibited in the public place;
  - (c) post signs prohibiting smoking in a form, manner and location that is prescribed, in conspicuous locations at every entrance and every washroom in the public place indicating that smoking is prohibited in the public place; and
  - (d) ensure that no ashtrays or similar smoking equipment are placed or permitted to remain in any part of the public place.

#### Exception

- (5) This section does not apply to
- (a) a restaurant or bar; or
  - (b) a room in a hotel, motel or other place where rooms are rented for sleeping accommodation, provided the room is used for sleeping accommodation only and the room is, at the time it is rented, designated and specifically set aside as a room in which smoking is permitted.

#### Proprietor may remove person from public place

(6) A proprietor may use reasonable means in the circumstance to remove a person from the public place if the person refuses to stop smoking in the public place.

#### Conflict with other legislation

**15.** If a provision of this Act is inconsistent with or in conflict with a provision of another Act, a regulation, or a by-law made by a municipal council under the *Cities*,

*Towns and Villages Act* or the *Hamlets Act* that deals with smoking, the provision that is the most restrictive of smoking prevails.

## INSPECTION

### Inspectors

**16.** (1) The Minister may appoint persons or classes of persons as inspectors for the purposes of this Act.

### Inspection

(2) For the purpose of determining whether this Act is being complied with, an inspector may, without a warrant, enter and inspect places referred to in section 9 and subsections 13(1) and 14(1) and the establishments of tobacco wholesalers and distributors.

### Restricted appointments

(3) The Minister may, in an appointment, restrict the inspector's powers of entry and inspection to specified places or kinds of places among those referred to in subsection (2).

### Time of entry

(4) The power to enter and inspect a place without a warrant may be exercised only during the place's regular business hours.

### Dwellings

(5) An inspector shall not enter and inspect a part of a place that is used as a dwelling without a warrant.

### Use of force

(6) An inspector is not entitled to use force to enter and inspect a place.

### Identification

(7) An inspector conducting an inspection shall produce, on request, evidence of his or her appointment.

### Powers of inspector

- (8) An inspector conducting an inspection may
- (a) examine a record or other thing that is relevant to the inspection;
  - (b) demand the production for inspection of a document or other thing that is relevant to the inspection;
  - (c) remove for review and copying a record or other thing that is relevant to the inspection;
  - (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and
  - (e) question a person on matters relevant to the inspection.

#### Vending machine

(9) An inspector conducting an inspection may open a vending machine for selling or dispensing tobacco if

- (a) the vending machine is operable or is in a place to which the public has access;
- (b) the owner or operator of a place referred to in subsection 12(1) refuses or is unable to open the machine; and
- (c) the inspector has reasonable grounds to believe that there is tobacco in the machine.

#### Exemption from liability

(10) No person is liable for damage done to the machine in connection with the opening.

#### Seizure

(11) An inspector may seize, without notice or other process, any tobacco or money found in the machine.

#### Forfeiture

(12) Tobacco seized under this section is forfeited to the Government of Nunavut and shall be disposed of as the Minister of Finance directs.

#### Money

(13) Any money found in a vending machine containing tobacco that is opened under this section is forfeited to the Minister of Finance.

#### Written demand and receipt

(14) A demand that a record or other thing be produced for inspection must be in writing and must include a statement of the nature of the record or thing required and, where the record or thing is removed, the inspector shall provide the person from whom it was removed with a receipt.

#### Obligation to produce and assist

(15) If an inspector demands that a record or other thing be produced for inspection, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

#### Records and things removed from place

- (16) A record or other thing that has been removed for review and copying
- (a) shall be made available to the person from whom it was removed, for review and copying, on request and at a time and place that are convenient for the person and for the inspector; and
  - (b) shall be returned to the person within a reasonable time.

Copy admissible in evidence

(17) A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value.

Obstruction

(18) No person shall hinder, obstruct or interfere with an inspector conducting an inspection, refuse to answer questions on matters relevant to the inspection or provide the inspector with information, on matters relevant to the inspection that the person knows to be false or misleading.

## OFFENCES AND PUNISHMENT

Offences

**17.** (1) Every person who contravenes subsections 3(1), 3(2) or 3(4), sections 4, 7, 8, 9 or 10, or subsections 13(1), 13(6), 14(1), 14(3), 16(18), 19(5), 20(6), 21(4) or 21(5) is guilty of an offence and is liable on summary conviction to a fine determined in accordance with subsection (4).

Continuing offence, signs

(2) Every person who contravenes section 11 or subsections 13(5) or 21(1) is guilty of an offence and is liable on summary conviction, for each day or part of a day on which the offence occurs or continues, to a fine determined in accordance with subsection (4).

Continuing offence, due diligence

(3) Every person who fails to carry out the requirements of subsections 5(1), 5(2), 5(3), 5(4), 13(3) or 14(4) is guilty of an offence and is liable on summary conviction, for each day or part of a day on which the failure occurs or continues, to a fine determined in accordance with subsection (4).

Determining maximum fine

(4) Despite any other act, the fine, or daily fine, as the case may be, shall not exceed an amount determined by establishing the number of times the defendant has been convicted of the same offence during the five years preceding the current conviction, and selecting

- (a) if the defendant is an individual, the amount set out in Column 3 of the Table to this section, opposite the number of previous convictions in Column 2 and the section or subsection number of the provision contravened in Column 1; or
- (b) if the defendant is a corporation, the amount set out in Column 4 of the Table to this section, opposite the number of previous convictions in Column 2 and the section or subsection number of the provision contravened in Column 1.

#### Sequence of convictions

(5) In establishing the number of times the defendant has been convicted of the same offence for the purposes of subsection (4), the only question to be considered is the sequence of convictions, and no consideration shall be given to the sequence of commission of offences or to whether an offence occurred before or after a conviction.

#### Continuing offence, vending machine

(6) Every person who contravenes subsection 12(1) is guilty of an offence and is liable on summary conviction, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$2,000.

#### Duty of directors and officers

(7) A director or officer of a corporation that engages in the manufacture, sale or distribution of tobacco has a duty to take all reasonable care to prevent the corporation from contravening this Act.

#### Duty of directors and officers

(8) A director or officer of a corporation that owns, occupies, operates or maintains a place referred to in paragraph 13(4)(e) has a duty to take all reasonable care to prevent the corporation from contravening subsection 13(5).

#### Offence

(9) Despite any other Act, a person who has the duty imposed by subsections (7) or (8) and fails to carry it out is guilty of an offence and is liable on summary conviction to a fine of not more than \$100,000.

#### Liability to prosecution

(10) A person may be prosecuted and convicted under subsection (9) even if the corporation has not been prosecuted or convicted.

TABLE

1	2	3	4
PROVISION CONTRAVENED	NUMBER OF EARLIER CONVICTIONS	MAXIMUM FINE— INDIVIDUAL  \$	MAXIMUM FINE— CORPORATION  \$
3(1), 3(2)	0	4,000	15,000
	1	10,000	20,000
	2	20,000	50,000
	3 or more	100,000	150,000
3(4), 4, 5(1), 5(2), 5(3), 5(4), 7, 8, 9, 11, 13(3), 13(5), 13(6), 14(4), 16(18), 19(5), 20(6), 21(1), 21(4), 21(5)	0	2,000	5,000
	1	5,000	15,000
	2	10,000	25,000
	3 or more	50,000	75,000
10	0	2,000	100 000
	1	5,000	300,000
	2	10,000	300,000
	3 or more	50,000	300,000
13(1), 14(1), 14(3)	0	1,000	
	1 or more	5,000	

#### Injunction

**18.** In addition to the penalties provided in section 17, the Minister may apply to the Nunavut Court of Justice for an injunction against any person who, having been convicted of an offence under this Act or the regulations, continues to contravene this Act or the regulations and, in addition to any other remedy and to any penalty that may have been imposed, the court may make an order prohibiting the continuation or repetition of the offence by the person.

#### AUTOMATIC PROHIBITION

##### Tobacco sales offences

- 19.** (1) For the purpose of this section, the following are tobacco sales offences:
- (a) contravening subsections 3(1) or 3(2), sections 4, 7, 8, 10, 11 or 12 or subsection (5) of this section; or
  - (b) contravening section 5.1 of the *Tobacco Tax Act*.

##### Notice

(2) The Minister, or a person designated in writing by the Minister, shall send a notice of the prohibition imposed by subsection (5) to the person who owns or occupies the place where the tobacco sales offences were committed, to the owner or lessee of the land on which the place is situated, to the Minister of Finance and to all wholesale dealers



of tobacco in Nunavut on becoming aware that the following conditions have been satisfied:

- (a) one or more persons have been convicted of two tobacco sales offences committed in a place owned or occupied by the person during a five year period;
- (b) any person has been convicted of a third tobacco sales offence committed in the same place during the five years preceding the last conviction referred to in paragraph (a); and
- (c) the period allowed for appealing a conviction referred to in paragraph (a) has expired without an appeal being filed, or any appeal has been finally disposed of.

#### Application of subsection (2)

(3) Subsection (2) does not apply where there is a change in ownership of the place as a result of a genuine arms length transaction between the first and second conviction, between the first and third conviction or between the second and third conviction.

#### Date

(4) The notice shall specify the date on which it is to take effect.

#### Sales, storage and deliveries prohibited

(5) Despite a permit having been issued under the provisions of the *Tobacco Tax Act*, during the applicable period,

- (a) no person shall sell or store tobacco in the place where the tobacco sales offences were committed; and
- (b) no wholesaler dealer shall deliver tobacco to the place or have it delivered there.

#### Applicable period

(6) For the purposes of subsection (5), the applicable period is

- (a) the six months that follow the date specified in the notice referred to in subsection (2), if the person has been convicted of two other tobacco sales offences committed in the same place during the five years preceding the current conviction;
- (b) the nine months that follow the date specified in the notice, if the person has been convicted of three other tobacco sales offences committed in the same place during the five-year period; and
- (c) the 12 months that follow the date specified in the notice, if the person has been convicted of more than three other tobacco sales offences committed in the same place during the five-year period.

#### Defence

(7) It is a defence to a charge under subsection (5) that the defendant had not received the notice at the time the offence was committed.

#### Exception

(8) The prohibition on storing tobacco does not apply to small amounts of tobacco for the immediate personal use of persons who work in the place.

#### Sequence of convictions

(9) In establishing the number of times a person was convicted of another tobacco sales offence for the purposes of this section, the only question to be considered is the sequence of convictions, and no consideration shall be given to the sequence of commission of offences or to whether an offence occurred before or after a conviction.

#### Publication in newspaper

(10) The Minister, or a person designated in writing by the Minister, shall cause a copy of the notice under subsection (2) to be published in a newspaper having local circulation in the community in which the offences were committed.

#### Seizure

**20.** (1) An inspector may seize, without notice or other process, tobacco that is stored in a place in contravention of section 19.

#### Forfeiture

(2) Tobacco seized under this section is forfeited to the Government of Nunavut and shall be disposed of as the Minister of Finance directs.

#### Money

(3) Any money found in a vending machine containing tobacco that is seized under this section is forfeited to the Minister of Finance.

#### Vending machine

(4) The inspector's power of seizure includes power to open a vending machine in order to examine the contents, if the inspector suspects on reasonable grounds that the machine contains tobacco that is stored in a place in contravention of section 19, and no person is liable for damage done to the machine in connection with the opening.

#### Application of subsections 16(4) to 16(7)

(5) Subsections 16(4), 16(5), 16(6) and 16(7) apply, with necessary modifications, to an inspector acting under subsections (1) or (3).

#### Obstruction

(6) No person shall hinder, obstruct or interfere with an inspector acting under this section.

#### Signs

**21.** (1) The owner or occupier of a place that is subject to a prohibition imposed under section 19 shall ensure that signs are posted at the place in the form and manner that are prescribed.

Posting by inspector

(2) If signs are not posted as prescribed, an inspector may enter the premises without a warrant and post signs in the form and manner that are prescribed.

Application of subsections 16(4) to 16(7)

(3) Subsections 16(4), 16(5), 16(6) and 16(7) apply, with necessary modifications, to an inspector acting under subsection (2).

Obstruction

(4) No person shall hinder, obstruct or interfere with an inspector acting under subsection (2).

Signs not to be removed

(5) No person shall remove a sign posted under this section while the prohibition remains in force.

MISCELLANEOUS

Regulations

- 22.** (1) The Commissioner in Executive Council may make regulations
- (a) defining any word or expression used in this Act but not defined in this Act;
  - (b) prescribing any matter or thing required or authorized by this Act to be prescribed; and
  - (c) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Regulations respecting package size

(2) A regulation respecting packaging requirements for the purposes of section 10 may prescribe a minimum package size to contain not fewer than the prescribed number of items or not less than the prescribed number of grams of tobacco.

General or specific application

(3) A regulation may be of general application or specific application.

Classes

(4) A class described in the regulations may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member of the class, whether or not the member has the same characteristics as other members of the class.

Codes

(5) The Commissioner in Executive Council may, by regulation, adopt by reference, in whole or in part, and with such changes as the Commissioner in Executive Council considers necessary, any code, standard, guideline or procedure, and require compliance with it as adopted.

Rolling incorporation

(6) If a regulation under subsection (5) so provides, a code, standard, guideline or procedure adopted by reference shall be adopted as amended from time to time, whether the amendment was made before or after the regulation was adopted.

Annual report of Chief Medical Health Officer

**23.** (1) The Chief Medical Health Officer shall prepare an annual report on the operation of this Act and submit it to the Minister in accordance with Part IX of the *Financial Administration Act*.

Legislative Assembly

(2) Every report submitted under subsection (1) shall be laid before the Legislative Assembly at the earliest possible time after it is received by the Minister.

## CONSEQUENTIAL AMENDMENTS

***Tobacco Tax Act amended***

**24.** (1) **Subsection 22(4) of the *Tobacco Tax Act* is repealed and the following substituted:**

Same

- (4) No wholesale dealer shall sell or deliver tobacco for resale
- (a) to a person who does not hold a valid retail dealer's permit; or
  - (b) to a retail dealer whose permit has been suspended under subsection 22.10(1) for the period of time that, and to the location where, the suspension is in effect.

**Additional amendment**

**(2) The *Tobacco Tax Act* is further amended by adding the following:**

Suspension of permit where automatic prohibition

22.10. (1) The Minister may suspend the permit of a dealer upon being notified by the Minister of Health and Social Services, or a person designated in writing by the Minister of Health and Social Services, that the dealer is subject to an automatic prohibition with respect to the sale of tobacco under the *Tobacco Control Act*.

Period of suspension

(2) A suspension under this section shall apply only to the particular place for which the automatic prohibition relates and for the time period and the dates set out in the notice of the Minister of Health and Social Services or his or her designate.

Service of notice

(3) A copy of the suspension shall be sent to all wholesale dealers of tobacco in Nunavut and served on the dealer by delivering it to or sending it by registered mail to his or her address as shown in the permit.

#### Storage

(4) During the period of suspension no person shall sell or store tobacco in the place to which the automatic prohibition relates.

#### Seizure

(5) An officer may seize, without notice or other process, tobacco that is stored in contravention of this section.

#### Forfeiture

(6) Tobacco seized under this section is forfeited to the Government of Nunavut and shall be disposed of as the Minister directs.

### ***Cities, Towns and Villages Act* amended**

#### **25. The *Cities, Towns and Villages Act* is amended by adding the following:**

##### Definitions

54.6. (1) In this section,

"public transit vehicle" includes a school bus and a passenger vehicle used for hire;  
(*véhicule de transport public*)

"workplace" includes a public transit vehicle. (*lieu de travail*)

##### By-law, smoking in public places and workplaces

(2) A council may, by by-law, regulate the smoking of tobacco in public places and workplaces within the municipality and designate public places or workplaces or classes or parts of such places as places in which smoking tobacco or holding lighted tobacco is prohibited.

##### Scope of by-law

(3) A by-law made under subsection (2) may

- (a) define "public place" and "workplace" for the purposes of the by-law;
- (b) require a person who owns or occupies a place designated in the by-law to post signs referring to the prohibition or to such other information relating to smoking as is required by the by-law;
- (c) prescribe the form and content of signs referred to in paragraph (b) and the place and manner in which the signs shall be posted;
- (d) permit persons who own or occupy a place designated in the by-law to set aside an area that meets criteria prescribed by the by-law for smoking within the place;
- (e) prescribe the criteria applicable to smoking areas in paragraph (d), including the standards for the ventilation of such areas;
- (f) require areas set aside for smoking in places designated by the by-law to be identified as an area where smoking is permitted; and

- (g) require the employer of a workplace or the owner or occupier of a public place to ensure compliance with the by-law.

#### Public places

(4) Despite any definition of "public place" contained in a by-law made under subsection (2), no by-law made under subsection (2) shall apply to a street, road or highway or a part thereof.

#### Inspectors

(5) A municipality may appoint inspectors for the purpose of a by-law made by the municipality under subsection (2).

#### Entrance without warrant

(6) An inspector may, at any reasonable time, enter any public place or workplace designated by a by-law under subsection (2) for the purpose of determining whether there is compliance with the by-law.

#### Dwelling

(7) Despite subsection (6), an inspector shall not exercise a power to enter a place, or a part of a place, that is used as a dwelling unless,

- (a) the occupier of the dwelling consents to the entry, having first been informed by the inspector of his or her right to refuse consent; or
- (b) if the occupier refuses to consent, the power to enter is exercised under the authority of a warrant issued under this section.

#### Powers of inspector

(8) An inspector may make such examinations, investigations and inquiries as are necessary to determine whether there is compliance with a by-law made under subsection (2).

#### Obstruction

(9) No person shall obstruct an inspector carrying out an inspection under this section.

#### Warrant

(10) A judge of the Nunavut Court of Justice or a justice of the peace may issue a warrant authorizing an inspector and such other persons as the judge or the justice of the peace may specify in the warrant to enter a place, including a place used as accommodation, for the purposes of an inspection under a by-law made under this section, subject to any conditions the judge or the justice of the peace may specify in the warrant, where the judge or the justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that a warrant is necessary in order for the inspector to exercise his or her powers under a by-law made under this section.

Notice

(11) An application under subsection (10) may be made without notice to the occupier, owner or any affected person.

Use of force

(12) The inspector may use such force as is reasonably necessary to execute the warrant and call on peace officers to assist in its execution.

Offence

(13) Any person who contravenes subsection (9) is guilty of an offence.

Government bound

(14) This section binds the Government of Nunavut.

Conflict with other legislation

(15) If there is conflict between a provision in a by-law made by a council under this section and a provision of any Act or regulation, the provision that is the most restrictive of smoking prevails.

***Hamlets Act amended***

**26. The *Hamlets Act* is amended by adding the following:**

Definitions

54.6. (1) In this section,

"public transit vehicle" includes a school bus and a passenger vehicle used for hire;  
(*véhicule de transport public*)

"workplace" includes a public transit vehicle. (*lieu de travail*)

By-law, smoking in public places and workplaces

(2) A council may, by by-law, regulate the smoking of tobacco in public places and workplaces within the municipality and designate public places or workplaces or classes or parts of such places as places in which smoking tobacco or holding lighted tobacco is prohibited.

Scope of by-law

(3) A by-law made under subsection (2) may

- (a) define "public place" and "workplace" for the purposes of the by-law;
- (b) require a person who owns or occupies a place designated in the by-law to post signs referring to the prohibition or to such other information relating to smoking as is required by the by-law;
- (c) prescribe the form and content of signs referred to in paragraph (b) and the place and manner in which the signs shall be posted;

- (d) permit persons who own or occupy a place designated in the by-law to set aside an area that meets criteria prescribed by the by-law for smoking within the place;
- (e) prescribe the criteria applicable to smoking areas in paragraph (d), including the standards for the ventilation of such areas;
- (f) require areas set aside for smoking in places designated by the by-law to be identified as an area where smoking is permitted; and
- (g) require the employer of a workplace or the owner or occupier of a public place to ensure compliance with the by-law.

#### Public places

(4) Despite any definition of "public place" contained in a by-law made under subsection (2), no by-law made under subsection (2) shall apply to a street, road or highway or a part thereof.

#### Inspectors

(5) A municipality may appoint inspectors for the purpose of a by-law made by the municipality under subsection (2).

#### Entrance without warrant

(6) An inspector may, at any reasonable time, enter any public place or workplace designated by a by-law under subsection (2) for the purpose of determining whether there is compliance with the by-law.

#### Dwelling

(7) Despite subsection (6), an inspector shall not exercise a power to enter a place, or a part of a place, that is used as a dwelling unless,

- (a) the occupier of the dwelling consents to the entry, having first been informed by the inspector of his or her right to refuse consent; or
- (b) if the occupier refuses to consent, the power to enter is exercised under the authority of a warrant issued under this section.

#### Powers of inspector

(8) An inspector may make such examinations, investigations and inquiries as are necessary to determine whether there is compliance with a by-law made under subsection (2).

#### Obstruction

(9) No person shall obstruct an inspector carrying out an inspection under this section.

#### Warrant

(10) A judge of the Nunavut Court of Justice or a justice of the peace may issue a warrant authorizing an inspector and such other persons as the judge or the justice of the peace may specify in the warrant to enter a place, including a place used as accommodation, for the purposes of an inspection under a by-law made under this



section, subject to any conditions the judge or the justice of the peace may specify in the warrant, where the judge or the justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that a warrant is necessary in order for the inspector to exercise his or her powers under a by-law made under this section.

Notice

(11) An application under subsection (10) may be made without notice to the occupier, owner or any affected person.

Use of force

(12) The inspector may use such force as is reasonably necessary to execute the warrant and call on peace officers to assist in its execution.

Offence

(13) Any person who contravenes subsection (9) is guilty of an offence.

Government bound

(14) This section binds the Government of Nunavut.

Conflict with other legislation

(15) If there is conflict between a provision in a by-law made by a council under this section and a provision of any Act or regulation, the provision that is the most restrictive of smoking prevails.

## REPEAL

### Repeal

**27. Paragraphs 13(4)(a) and 14(5)(a) are repealed on the second anniversary of the day that those paragraphs come into force.**

## COMING INTO FORCE

### Coming into force

**28. This Act or any portion of this Act comes into force on a day or days to be fixed by order of the Commissioner.**